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SENATE

REPORT
99-400

AIR CARRIER ACCESS ACT OF 1986

AUGUST 13 (legislative day, AUGUST 11), 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2703]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2703) to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 2703, as reported, is to prohibit specifically air carriers from discriminating against handicapped individuals in the provision of air transportation. The Secretary of Transportation (the Secretary) would be required to promulgate regulations within 120 days after the date of enactment the Act to ensure nondiscriminatory treatment by air carriers of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.

BACKGROUND AND NEEDS

S. 2703 was introduced in response to the U.S. Supreme Court's decision in *U.S. Department of Transportation* v. *Paralyzed Veterans of America* [*DOT* v. *PVA*] No. 85-289 (June 27, 1986). The Paralyzed Veterans of America [PVA] had challenged final regulations of the Civil Aeronautics Board [CAB] designed to prevent discrimination against handicapped persons in air transportation. The CAB had applied the regulations only to small airlines which received direct Federal subsidied under specific subsidy programs. PVA ap-

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pealed the regulations to the U.S. Court of Appeals for the District of Columbia Circuit, arguing that the regulations should be applied to all air carriers. The court of appeals agreed, holding that air carriers, although not recipients of direct Federal assistance, received enough Federal assistance to bring them within the scope of section 504 of the Rehabilitation Act of 1973. (The Rehabilitation Act of 1973 prohibits discrimination against the handicapped by a program or activity receiving Federal financial assistance). In its decision, the Court of Appeals pointed to the airlines' use of federally funded airports and the Federal air traffic control system as examples of Federal financial assistance.

The Department of Transportation [DOT], which in 1985 inherited many of the CBA's functions, appealed the circuit court's decision to the Supreme Court, arguing that section 504's prohibitions against discrimination applied only to entities receiving direct Federal financial assistance. The Supreme Court, on June 17, 1986, agreed, effectively freeing large air carriers from the discrimination prohibitions of the Rehabilitation Act of 1973.

Although section 404(a) of the Federal Aviation Act of 1958 imposes on air carriers a duty to provide safe and adequate service, it is unclear whether this language is sufficient statutory authority to support detailed, specific antidiscrimination rules. As a result, the practical effect of *DOT* v. *PVA* is to leave handicapped air travelers subject to the possibility of discriminatory, inconsistent and unpredictable treatment on the part of air carriers. Representatives of handicapped groups submit that handicapped travelers have been forced to comply with requirements which are unrelated to safety and are not imposed upon other travelers. These advocates also argue that policies for accommodating the handicapped vary from airline to airline, and can vary within any one airline. For example, a handicapped individual who travels unaccompanied on an airline to a destination may be required by the same airline to be accompanied by an attendant on the return flight. As a result, handicapped travelers cannot predict in advance what conditions airlines may impose upon them.

In recognition of the unique difficulties now faced by handicapped air travelers, S. 2703 would mitigate the effect of *DOT* v. *PVA* by amending section 404 of the Federal Aviation Act of 1958 to prohibit specifically discrimination against otherwise qualified handicapped individuals. The bill would give the Secretary 120 days after its date of enactment within which to promulgate regulations to prevent air carriers from discriminating, in the provision of air transportation, against handicapped individuals. S. 2703 does not mandate any compromise of existing DOT or Federal Aviation Administration [FAA] safety regulations.

Legislative History

S. 2703 was introduced on July 30, 1986 by Senator Dole and 16 original cosponsors, including 5 members of the Committee. No hearings were held. On August 7, 1986, the Committee met in open executive session to consider S. 2703, and without objection, ordered S. 2703 reported favorably.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 8, 1986.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2703, the Air Carrier Access Act of 1986, as ordered reported by the Senate Committee on Commerce, Science and Transportation, August 7, 1986. CBO expects enactment of this bill to result in no significant costs to the federal government and no costs to state or local governments.

S. 2703 would amend the Federal Aviation Act of 1958 to prohibit air carriers from discriminating against handicapped individuals in the provision of air transportation. The Secretary of Transportation would be required to promulgate regulations to ensure nondiscriminatory treatment of these individuals.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill would prohibit air carriers from discriminating against the handicapped in the provision of air transportation, and would require the Secretary's promulgation of regulations prohibiting such discrimination.

Approximately 350 air carriers are affected by the bill. About 50 of these are already subject to DOT's existing rules prohibiting discrimination against the handicapped. In view of the fact that air carriers now regularly transport handicapped passengers under a variety of individual rules and conditions, it is the Committee's expectation that the net effect of the regulations the Secretary is directed to promulgate will not significantly increase the regulatory burden imposed upon air carriers.

The Committee does not anticipate that S. 2703 will affect the personal privacy of individuals or impose any new paperwork burdens.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

This section states that short title the Act is the "Air Carrier Access Act of 1986."

SECTION 2—PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

Section 2 amends section 404 of the Federal Aviation Act of 1958 to add a new subsection (c) titled "Prohibition on Discrimination Against Handicapped Individuals." The new subsection prohibits an air carrier from discriminating in the provision of air transportation against an otherwise qualified handicapped individual by reason of such handicap. While the new subsection does not prohibit specific practices on the part of air carriers, the Committee intends that airlines will not, in providing air transportation, impose upon handicapped travelers any regulations or restrictions unrelated to safety and unrelated to the nature and extent of any individual's handicap. The section is also intended to express Congress' intent that the inconsistency in services presently being offered by different air carriers, or by the same air carrier on different flights, be reduced or, where possible, eliminated.

Section 2 defines "handicapped individual" as one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. This definition is similar to definitions found both in section 706 of the Rehabilitation Act of 1973 and in DOT's existing regulations prohibiting discrimination against handicapped travelers by air carriers which receive direct Federal financial assistance (14 C.F.R., section 382.3).

The phrase "otherwise qualified handicapped individual" is intended to be consistent with DOT's definition in 14 C.F.R. section 382.3(c) that a qualified handicapped person is one who tenders payment for air transportation; whose carriage will not violate FAA regulations; and who is willing and able to comply with reasonable, safety requests of airline personnel or, if not, is accompanied by a responsible adult passenger who can ensure compliance with the requests.

SECTION 3—PROMULGATION OF REGULATIONS BY THE SECRETARY

Section 3 requires the Secretary, within 120 days after the date of enactment, to promulgate regulations to ensure nondiscriminatory treatment of qualified handicapped individuals. The language of section 3 is intended to make clear that the rules which the Secretary is directed to promulgate must ensure the safe carriage of passengers. With that qualification, the Secretary is given discretion to develop regulations for the nondiscriminatory treatment by air carriers in the provision of air transportation to handicapped individuals. The Committee urges that these regulations require that airline procedures for transporting handicapped individuals distinguish between the differing abilities of handicapped persons, and that any airline procedures applicable only to handicapped

passengers be related to safety considerations. In devising rules, the Secretary may wish to refer to existing regulations and standards affecting handicapped travelers including, but not limited to, DOT's rules located at 14 C.F.R. section 382 prohibiting discrimination against the handicapped by subsidized air carriers, and guidelines established by the Architectural and Transportation Barriers Compliance Board.

The Committee expects DOT to implement enforcement mechanisms to ensure compliance with its regulations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE FEDERAL AVIATION ACT OF 1958

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(b) Discrimination.

(c) Prohibition on discrimination against handicapped individuals.

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Section 404 of that Act

RATES FOR CARRIAGE OF PERSONS AND PROPERTY CARRIER'S DUTY TO PROVIDE SERVICE, RATES, AND DIVISIONS

SEC. 404. (a)-(b) * * *

PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

(2) For the purposes of paragraph (1) of this subsection the term "handicapped individual" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

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